**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL No. 936 of 1993**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**ASSISTANT COLLECTOR OF CUSTOMS - Appellant**
**Versus**
**JAYRAM RAMJI MANGELA & 1 - Respondents**

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**Appearance :**
MR BIPIN BHATT for Appellant:
MS SADHANA SAGAR for Respondent : 1,
MR. M.A. PATEL, LD. APP for Respondent: 2,

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**CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT**

**Date : 12/01/2007**

**ORAL JUDGMENT**

1. The Assistant Collector of Customs, Valsad, the appellant has preferred this appeal under Section 378 of the Code of Criminal Procedure,

1973 [herein after referred to as the 'Code' for short], challenging the order of acquittal dated 31/3/1992 passed by learned Sessions Judge, Valsad at Navsari, in criminal Appeal No. 13 of 1991, quashing and setting aside the order of conviction and sentence dated 16/5/1991 passed by learned Addl. Chef Judicial Magistrate, Valsad in Criminal Case No. 1 of 1987 and acquitting the accused/ present respondent of the charge of commission of offence under Section 135 of the Customs Act, 1962 and under Section 85 of the Gold Control Act, 1968. This Court (Coram: N.J. Pandya, J) granted leave and admitted the appeal vide order dated 29/7/1993.

2. Heard learned counsels for the parties. The facts in brief leading to filing of this appeal deserve to be set out as under:

2.1 The complaint came to be filed by one Shri. Dayashankar, Assistant Collector of Customs, Valsad against original accused no.1 Anil Jayram Mangela and Shri. Jayram Ramji Mangela in the court of learned Addl. Chief Judicial Magistrate, Valsad for commission of offence by the accused punishable under section 135 of the Customs Act 1962 and sectin 85 of the Gold Control Act, 1968. It was alleged that on 24/12/1985 Superintendent of Customs (Preventive) Valsad in presence of the panchas and with the help of his staff members carried out raid in the house of the accused at

village Tadgam, Taluka Umbergam, District Valsad, wherein accused no.2 was found present in the house and 24 gold biscuits bearing foreign markings where seized after drawing panchnama. On purity test it was ascertained that the same was made of primary gold and each biscuit was weighing 10 tolas. On 2/1/1986 Superintendent of Customs, Valsad Shri. Upadhya with the help of his staff members and panchas raided the house of the accused which was also situated in the same village which appeared to be unattended but locked, and therefrom currency notes worth Rs.4,80,000=00 concealed beneath the earth was seized. The panchnama was also drawn on the spot. During investigation it is alleged that the statements of both the accused were recorded under section 108 of Customs Act and accused disclosed commission of offence in the statement itself. The accused no.1 Shri. Anil Jayram Mangale, son of accused no.2 Shri. Jayram Ramji Mangele had during the course of fishing at village Tadgam sea coast found 48 biscuits of foreign markings which he had brought to his house and concealed till his father Jayram arrived from sea for where he had gone for fishing. Accused no.2 carried 24 gold biscuits and disposed of the same at Bombay with th help of his master. The sale price of which was hidden down in the ground was sezed by the authorities. On 2/1/1986 on completion of investigation a complaint was lodged in the court of Addl. Chief

Judicial Magistrate, Valsad which came to be numbered as Criminal Case No. 1 of 1987. The trial court after recording evidence of the prosecution acquitted accused no.1 and convicted accused no.2 for commission of offence punishable under section 135 of the Customs Act and Section 85 of the Gold Control Act. Accused no.2 was sentenced to undergo R.I. for three years and was ordered to pay fine of Rs.30,000=00; and in default to further undergo simple imprisonment for three months for commission of offence under section 135 of Customs Act. Accused no.2 was not sentenced separately for offence under section 85 of Gold Control Act.

2.2 The accused challenged the impugned order of conviction dated 16/5/1991 passed by learned Addl. Chief Judicial Magistrate in Criminal Case No. 1 of 1987 before Sessions Court at Valsad by preferring Criminal Appeal No. 13 of 1991. The appellate court after elaborate discussions passed an order dated 31/3/1992 quashing and setting aside the order of the trial court and acquitted the accused which is impugned in the present appeal under section 378 of Criminal Procedure Code.

3 Shri. Bhatt, learned counsel appearing for the appellant has submitted that the appellate court below has mainly allowed the appeal setting aside the order of conviction on the ground that

sanction which was required originally for lodging the prosecution was not proved and therefore said lapse was treated to be a serious infirmity which vitiated the case of the prosecution and therefore, the order of acquittal is passed. Shri. Bhatt has submitted that the complaint filed before the court of learned Magistrate itself did not deal sanction by competent authority under section 137 of the Customs Act and section 97 of Gold Control Act. Therefore trial court had negatived the contention of the defence that the sanction can not be said to have been proved. Shri. Bhatt has submitted that looking to the record and proceedings it can be said that the order of acquittal is based without appreciating the record and proceedings and therefore the order of learned Sessions Judge is required to be quashed and set aside.

4. Ms. Sadhana Sagar appearing for the respondent / accused has submitted that this being an acquittal appeal this Court may not reverse the order of acquittal unless and until it is proved by the appellant that sustaining of the appeal would result into miscarriage of justice or the acquittal appeal could be permitted to be sustained on any other grounds on which the order of trial court was per say erroneous and therefore the appellate court was justified in quashing and setting aside the

order of trial court. Though the so called sanction was produced along with complaint said sanction letter has not been exhibited during the trial. When the document is produced on record and it remained to be proved and when for want of proper evidence and proof thereof it has not been exhibited, then those document can not be relied upon by the prosecution for fastening a citizen with criminal liability. In the instant case as it is clear from the record the so called letter of sanction which is accompanying the complaint has not been duly proved by the prosecution.

5. Ms. Sagar further submitted that, in addition to the aforesaid submission, the records & proceedings also go to show that the prosecution has not proved its case beyond doubt against the present respondent / original accused no.2 also. The person who has taken town the statement under section 106 of the Customs Act had bot been examined, therefore said statement can not be understood to have been proved voluntarily and or having any effect against the accused. Against this backdrop present appeal deserves to be dismissed.

6. This Court perused the Records & Proceedings and heard learned counsels for the parties at length. The fact remains to be noted that preferring of the complaint was sanctioned by

one Dayasankar, Assistant Collector of Customs, Valsad and it was specifically admitted by the concerned Public Prosecutor that said Shri. Dayalsankar had not been examined by the prosecution. The testimony of the Superintendent who has been examined has also not uttered a single word about the sanction nor has he said that sanction was ever obtained by even said Shri. Dayalsankar for filing the complaint. The trial court has therefore wrongly determined the point against the accused that sanction was validly issued. The trial court ought to have appreciated the fact that the sanction was required to be proved and duly exibited before the same could have been taken into consideration. In view of these facts & circumstances and in view of the fact that the prosecution can not be said to have been proved its case beyond reasonable doubt even against the accused no.2, the order of acquittal passed by the appellate court can not be interfered with under section 378 of the Criminal Procedure Code.

7. This Court is mindful that this being an appeal against the order of acquittal same is not to be disturbed unless & until it is demonstrated by the appellant that the order of acquittal has resulted into miscarriage of justice. In absence of any such plea coming forth and looking to the evidence of the

prosecution, this Court is of the considered opinion that the order of acquittal is just and proper and does not call for any interferences.

8. In view of the aforesaid discussions, this Court is of the considered opinion that the order impugned in this appeal dated 31/3/1992 passed by Learned Sessions Judge, Valsad at Navsari, in Criminal Appeal No. 13 of 1991 does not call for interference. The appeal fails and is accordingly dismissed. Bail bond shall stand cancelled.

[ S.R. BRAHMBHATT, J ]

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